No. 80-653

Supreme Court, U. S.
FILED
JAN 2 1981

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

JOSEPH L. ALIOTO, et al.,
Petitioners,

vs.

JOSEPH B. WILLIAMS, et al., and LEO BAZILE, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITION FOR CERTIORARI

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Respondents pray that a Writ of Certiorari be denied to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 24, 1980 and amended on August 29, 1980.

STATEMENT OF THE CASE

This case was originally commenced by respondents Williams, et al., on April 19, 1974 by the filing of a complaint for injunctive and declaratory relief in the United States District Court for the Northern District of California. On April 22, 1974, respondents Leo Bazile, et al., also filed a complaint for injunctive and declaratory relief in the same court. The respondents in two consolidated actions chal-

lenged police practices in San Francisco from April 17, 1974 to April 25, 1974 known as "Operation Zebra". The challenged police directives authorized officers to stop and frisk black males resembling two composite drawings. More than 600 Black men were stopped during the operation.

After an evidentiary hearing, the District Court entered Findings of Fact and Conclusions of Law and issued a preliminary injunction against the complained-against police practices. The District Court's order included a finding that respondents were entitled to attorneys' fees.

Petitioners appealed the preliminary injunction. Before the appeal was heard, four men were convicted and sentenced for the series of killings and assaults identified as the "Zebra" case; and further investigation had ceased. Thereafter, the United States Court of Appeals for the Ninth Circuit dismissed the appeal as moot and vacated the preliminary injunction.[1]

The respondents then moved the District Court to set the amount of the attorneys' fees awarded at the time the preliminary injunction was issued. The District Court, after reviewing the affidavits submitted by plaintiffs' counsel and after hearing argument from all parties, entered an order setting fees at $20,000.00 to the attorneys for Mr. Williams and $25,000.00 to the attorneys for Mr. Bazile. That order was reviewed and upheld by the Court of Appeals.[2]

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[1] *Williams v. Alioto*, 549 F.2d 136 (9th Cir. 1977).

[2] *Williams v. Alioto*, 625 F.2d 845 (9th Cir. 1980).

REASONS FOR DENYING THE WRIT

The Court of Appeals Has Decided the Question With Sufficient Guidance From This Court

Petitioners contend that the Ninth Circuit has decided an important question of federal law which has not been settled by this Court or the case has been decided in a way in conflict with applicable decisions of this Court. Respondents urge denial of the Writ because a reading of *Hanrahan v. Hampton,* ..... U.S. ....., 100 S.Ct. 1987 (1980) makes it clear that attorneys' fees properly were granted in this case and granted in a manner which does not conflict with applicable decisions of this Court.

In *Hanrahan, supra,* the Court analysed "prevailing party" under 42 U.S.C., Section 1988. Quoting from legislative history of the Act, the Court noted that "Congress contemplated the award of fees *pendente lite* in some cases [citations omitted] but it seems clearly to have been the intent of Congress to permit such an interlocutory award only to a party who has established his entitlement to some relief on the merits of his claims, either in the trial court or on appeal." *Hanrahan v. Hampton, supra,* at page 1989.

Two cases were referred to as having been considered by Congress in determining the appropriateness of an award for attorneys' fees: *Bradley v. Richmond School Board,* 416 U.S. 696, 94 S.Ct. 2006 and *Mills v. Electric Auto-Lite Co.,* 396 U.S. 375, 90 S.Ct. 616. The Court summarized by stating, "It seems apparent from these passages that Congress intended to permit the interim award of counsel fees only when a party has prevailed on the

merits of at least some of his claims. For only in that event has there been a determination of the 'substantial rights of the parties' which Congress determined was a necessary foundation for departing from the usual rule in this country that each party is to bear the expense of his own attorney." *Hanrahan v. Hampton, supra,* at page 1989.

There has been a "determination of the substantial rights of the parties" in the instant case. The District Court conducted a trial of the matter and entered Findings of Fact and Conclusions of Law which determined the rights of the respondents in a manner which sufficiently achieved the purposes of the litigation to make it obvious to the most casual observer that they were the prevailing parties.

The District Court made a ruling on the merits of the litigation and determined that the police practices violated the respondents' constitutional rights. The mere filing of the original lawsuit did not trigger the award of attorneys' fees. The absence of a ruling on the substance of the District Court's order in the Appeals Court does not relieve the petitioners from the necessity of paying attorneys' fees. Their obligation to pay attorneys' fees should not be ended simply because the factual situation which gave rise to the lawsuit was resolved before the Ninth Circuit heard the Appeal of the District Court's ruling. The dismissal of the appeal occurred because there was no longer a case or controversy under Article III of the United States Constitution. The dismissal did not have the effect of reversing the obvious conclusion that the preliminary injunction prevented the petitioners from the continued

enforcement of their original practices, the exact relief the respondents had sought from the District Court.

Attorneys' fees are appropriate where "a party has prevailed on an important matter in the course of litigation, even when he ultimately does not prevail on *all* issues [cites omitted]". *Hanrahan v. Hampton, supra,* at page 1989. Respondents have prevailed on an important matter in that the District Court ordered the petitioners to stop acting in accordance with certain guidelines. Respondents failed to prevail in the Ninth Circuit merely on the issue of whether there was currently a case or controversy. The instant case clearly falls within that class of cases where respondents have prevailed on an important matter even thought they did not prevail on *all* issues. Having prevailed on the subject matter of the preliminary injunction is sufficient to invoke the provisions of 42 U.S.C., Section 1988.

CONCLUSION

There has been a trial of the matter which resulted in the issuance of a preliminary injunction. Such injunction was the remedy sought by the respondents. Having obtained the sought-after remedy, respondents clearly were the prevailing parties under the provisions of 42 U.S.C., Section 1988, a status unchanged by the subsequent dismissal of the appeal as moot because of the absence of a case or controversy. The Court of Appeals has decided this case in an area where this Court has already spoken. Further, the Court of Appeals has decided this case in a way not in conflict with applicable decisions of this Court.

Dated: January 5, 1981

Respectfully submitted,

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